

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA**

Talvin Johnson, #323094,	)	C/A No. 2:14-cv-0768 DCN WWD
	)	
Petitioner,	)	
	)	
vs.	)	<b><u>ORDER</u></b>
	)	
Warden, Lee Correctional Institution,	)	
	)	
Respondent.	)	

The above referenced case is before this court upon the magistrate judge's recommendation that if petitioner notifies the court that he wishes to continue with this case and provide a response to respondent's motion, the Report and Recommendation should be vacated and the case returned to the Magistrate Judge for further handling.

This court is charged with conducting a de novo review of any portion of the magistrate judge's report to which a specific objection is registered, and may accept, reject, or modify, in whole or in part, the recommendations contained in that report. 28 U.S.C. § 636(b)(1). However, absent prompt objection by a dissatisfied party, it appears that Congress did not intend for the district court to review the factual and legal conclusions of the magistrate judge. Thomas v. Arn, 474 U.S. 140 (1985). Additionally, any party who fails to file timely, written objections to the magistrate judge's report pursuant to 28 U.S.C. § 636(b)(1) waives the right to raise those objections at the appellate court level. United States v. Schronce, 727 F.2d 91 (4th Cir. 1984), cert. denied, 467 U.S. 1208 (1984).<sup>1</sup> **An extension of time for filing objections to the Report**

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<sup>1</sup>In Wright v. Collins, 766 F.2d 841 (4th Cir. 1985), the court held "that a pro se litigant must receive fair notification of the consequences of failure to object to a magistrate judge's report before such a procedural default will result in waiver of the right to appeal. The notice must be 'sufficiently understandable to one in appellant's circumstances fairly to appraise him of what is required.'" Id. at 846. Plaintiff was advised in a clear manner that his objections

and Recommendation was granted, giving petitioner until September 29, 2014. Petitioner's motion for judgment on the pleadings was filed on October 2, 2014, however, the envelope shows the motion was received in the prison's mail room on September 29, 2014. Therefore, the motion is considered timely filed.

A de novo review of the record indicates that the magistrate judge's report accurately summarizes this case and the applicable law. Accordingly, the magistrate judge's report and recommendation is **AFFIRMED**, the Report and Recommendation is hereby **AFFIRMED** and this case is returned to the Magistrate Judge for further handling.

**IT IS FURTHER ORDERED** that petitioner's motion for judgment of the pleadings be re-categorized as his response to respondent's motion for summary judgment.

**AND IT IS SO ORDERED.**



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David C. Norton  
United States District Judge

October 7, 2014  
Charleston, South Carolina

**NOTICE OF RIGHT TO APPEAL**

The parties are hereby notified that any right to appeal this Order is governed by Rules 3 and 4 of the Federal Rules of Appellate Procedure

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had to be filed within ten (10) days, and he received notice of the consequences at the appellate level of his failure to object to the magistrate judge's report.